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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/786,305	05/06/2002	Craig B. Labrie	TRM DV2539	8328

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GROSSMAN, TUCKER, PERREAULT & PFLEGER, PLLC
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MANCHESTER, NH 03101

EXAMINER

ENGLISH, PETER C

ART UNIT	PAPER NUMBER
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3616

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/786,305

Applicant(s)

LABRIE ET AL.

Examiner

Peter C. English

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 22-39 and 42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and 22-39 is/are allowed.
- 6) ☒ Claim(s) 42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 October 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The corrected drawing sheets 12-22 filed on 12 October 2004 have been *DISAPPROVED* because Figs. 26 and 29 do not include the corrections made via the replacement sheets filed on 07 June 2004. Further, Fig. 26 does not address the examiner's objection to the illustration of the tear seams 316.

2. The drawings are objected to because:

Fig. 15 appears twice, once on sheet 11 and again on sheet 12. Since the drawing sheets contain sheet numbers, corrected drawings sheets with corrected sheet numbers will be necessary to correct the duplicated figure.

In Fig. 26, the illustration of the tear seams 316 is inaccurate and/or incomplete. According to the paragraph beginning at page 8, line 18, "Figure 28 is a magnified view of the regions in Figure 26 bounded by Circle A". Therefore, the illustration of the tear seams 316 in Fig. 26 should be consistent with the illustration of the tear seam 316 in Fig. 28.

3. Corrected replacement drawing sheets are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground

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provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b). Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claim 42 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 18 and 38 of U.S. Patent No. 5,941,558 in view of DiSalvo et al. (US 4,893,833). Claims 18 and 38 of U.S. Patent No. 5,941,558 do not recite a support structure to which the reaction plate is connected. DiSalvo et al. teaches a vehicle panel 12 provided with a support structure 36 to which a reaction plate 18 is connected. From this teaching of DiSalvo et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify claims 18 and 38 of U.S. Patent No. 5,941,558 by providing the panel with support structure to which the reaction plate is connected in order to provide a strong and secure mounting for the reaction plate. With respect to claim 38 of U.S. Patent No. 5,941,558, it would have been obvious to delete the limitation that the frangible edge defines the entire door perimeter because it is well settled that a modification involving a mere elimination of an element/limitation is within the level of ordinary skill in the art.

6. Claim 42 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 19 of U.S. Patent No. 6,203,056. Claim 19 of U.S. Patent No. 6,203,056 differs from claim 42 of the instant application in that claim 19 recites the additional limitation that the reaction plate is fastened to the door by a screw threaded into a boss extending integrally from the door. It would have been obvious to delete this additional limitation from claim 19 of U.S. Patent No. 6,203,056 because it is well settled that a modification involving a mere elimination of an element/limitation is within the level of ordinary skill in the art.

Response to Arguments

7. Applicant's arguments filed on 12 October 2004 have been fully considered but they are not persuasive. Applicant argues that the illustration of the tear seams 316 in Fig. 26 is accurate. The examiner disagrees. According to the paragraph beginning at page 8, line 18 of

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the specification, "Figure 28 is a magnified view of the regions in Figure 26 bounded by Circle A". Therefore, the illustration of the tear seams 316 in Fig. 26 should be consistent with the illustration of the tear seam 316 in Fig. 28 (i.e., they should have the same shape).

Applicant argues that the double patenting rejection based on U.S. Patent No. 5,941,558 in view of DiSalvo et al. is improper because the relied upon combination fails to teach all of the elements recited in claim 42 (i.e., a reaction plate connected to a support structure and including a pivotable panel portion configured to pivot outward under the force of air bag inflation). The examiner disagrees because DiSalvo et al. teaches a reaction plate 18 connected to a support structure 36, the plate 18 having a pivotable panel portion (see Fig. 2) configured to pivot outward under the force of air bag inflation. Further, applicant argues that the plate 18 of DiSalvo et al. is not a "reaction plate" because it does not move independently of the door. This argument fails because claim 42 fails to recite that the reaction plate moves independently of the door.

Applicant argues that the double patenting rejection based on U.S. Patent No. 6,203,056 is improper because claim 42 is drawn to a distinct embodiment from claim 19 of the patent. This argument fails because claim 42 encompasses the embodiment of claim 19 of the patent. Further, applicant argues that it would not have been obvious to eliminate a "critical feature" from claim 19 of the patent. This argument fails because removing the screw and boss connection of claim 19 would not render the claimed invention inoperative—it would simply render it more broad. Such a change involving a mere elimination of an element/limitation is certainly within the level of ordinary skill in the art.

Allowable Subject Matter

8. Claims 1 and 22-39 are allowed.
9. Claim 42 would be allowable if a terminal disclaimer is filed to overcome the double patenting rejections.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

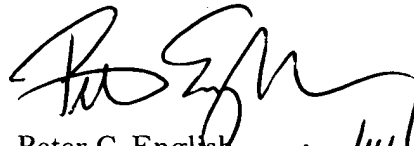
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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter C. English whose telephone number is 703-308-1377. The examiner can normally be reached on Monday through Thursday (7:00 AM - 5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul N. Dickson can be reached on 703-308-2089. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Peter C. English
Primary Examiner
Art Unit 3616
12/14/04

pe
14 December 2004